Supreme Court, U.S.
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02-1789 JUN 6 2003

In The

Supreme Court of the United States

In re AUGUSTUS J. SIMMONS,

Petitioner.

On Petition For Writ Of Habeas Corpus To The United States District Court, District of Connecticut

PETITION FOR WRIT OF HABEAS CORPUS

AUGUSTUS SIMMONS
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QUESTION PRESENTED

The federal question, pursuant to 28 U.S.C. § 2254, is whether petitioner/owner is being held in custody in violation of the constitution, laws, or treaties of the United States by the decree of the Supreme Court of Connecticut in *Simmons v. Wetherall*, 180 Conn. 587 (1980), an Only Remedy 1970 Tort Action without a single hearing in damages – foreclosed on May 31, 2000 notwithstanding two (2) null and void condemnations; transcending the limits of its authority that is VOID on its face without jurisdiction of the subject matter – or the parties; without any mesne process initiated before the original courts of competent jurisdiction of Connecticut; without any docket number, decree, judgment, stipulation, contract, agreement regarding real property acquisition before the Superior Court upon which the Supreme Court could act upon; denial of a day in court and a full and fair hearing; where the incidents of INTENT TO DEFRAUD were several, significant, and fraudulent as combining of cases to keep "LEASES" between state and federal agencies of petitioner's real property without notice or compensation to the owner – out of court and out of the record; canceling fifteen (15) hearing dates for damages on first day of appearance by private counsel (Rogin-Hirtle, Esq.'s); placing of encumbrances against the real properties without notice or service of process on interested and necessary parties – without any pre- or post-deprivation hearings for real property contracts; that upon the rejection, repudiation, disassociation and constitutional right NOT to entertain, accept, assign, use a fraudulent "verbal" offer by refusing to tender any deeds on April 19, 1978 to discharged and

QUESTION PRESENTED – Continued

withdrawn private counsel (Rogin-Hirtle, Esq.'s) acting in joint representation simultaneously of petitioner/owner and respondent – the petitioner (plaintiffs)* were denied due process of law.

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* Refers to lien-holders on land records on June 5, 1978 and all subsequent attachments.

PARTIES TO THE PROCEEDING

Petitioner:

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TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	iii
OPINIONS BELOW	1
JURISDICTION OF FEDERAL COURT TO ACT	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	5
Damages	6
REASONS FOR GRANTING THE WRIT	7
Question for Review	8
Claim One	9
Claim Two	11
28 U.S.C. § 2254	12
Co-Conspiratorial Fraud	15
Unconstitutional Seizure-or-Criminal	16
Claim Three	18
Transcending – Transmogrifying	20
CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

Shelton v. Wolthausen, 80 Conn. 599 (1908) 21

Simmons v. Wetherall, 180 Conn. 587 (1980) .. 7, 9, 10, 20, 22

Standard Oil New Jersey v. United States, 221 U.S. 1, 31 S.Ct. 502 (1911) 12, 20

Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037 (1976) ... 1, 12, 17

CONSTITUTIONS

U.S. Const. amend. IV 2

U.S. Const. amend V 19

U.S. Const. amend VI 19

U.S. Const. amend. XIV 2, 20

STATUTES

28 U.S.C. § 2254 ..... 1, 5, 7, 8, 12

28 U.S.C. § 2254(a) 2

28 U.S.C. § 2254(d)(4) 11

42 U.S.C. §§ 4601-4655 17

42 U.S.C. § 4653 10

42 U.S.C. § 4654 10

C.G.S. § 48-17a 10

C.G.S. § 48-21 17

OPINIONS BELOW

There was no order from the United States District Court for the District of Connecticut on April 27, 2003, as the Clerk refused to file or even accept for filing the Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 by a Person in State Custody.

On October 7, 2002, the Superior Court of the State of Connecticut at Rockville (S. Fuger, J.) granted the State's Motion to Dismiss the Petitioner's Petition for Habeas Corpus and on October 22, 2002, denied the Petitioner's Application for Permission to Appeal.

On August 20, 1998, the Superior Court of the State of Connecticut, Geographical Area 13, Enfield (Harleston, J.) filed a Criminal Judgment in three separate cases against Petitioner and on May 30, 2000, the Connecticut Appellate Court affirmed the Judgment. On July 13, 2000, the Supreme Court of the State of Connecticut denied Petitioner's Petition for Certification to Appeal.

JURISDICTION OF FEDERAL COURT TO ACT

Citing *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037 (1976) at 3068 reads:

> " . . . insofar as this jurisdiction enables federal district courts to entertain claims that state supreme courts have denied rights guaranteed by the United States Constitution, it is not a case of a lower court sitting in judgment on a higher court. *It is merely one aspect of respecting the Supremacy Clause of the Constitution whereby federal law is higher than state law. It is for the congress to designate the member in the hierarchy*

> *of the federal judiciary to express the higher law.* The fact congress has authorized district courts to be the organ of the higher law rather than a court of appeals or exclusively this court does not mean that it allows a lower court to overrule a higher court. It merely expresses the choice of congress how the superior authority of federal law should be asserted." [*Daniels v. Allen*,] 344 U.S. at 508-510, 73 S.Ct. at 447, 448 [1953] (emphasis in original).

Jurisdiction of this Court is invoked under 28 U.S.C. § 2254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

> [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

> Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

§ 2254 State Custody; Remedies in Federal Courts

(a) The supreme court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state, or that there is either an absence or available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the state, within the meaning of this section, if he has the right under the law of the state to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court, a determination after a hearing on the merits of a factual issue, made by

a state court of competent jurisdiction in a proceeding to which the applicant for the writ and the state or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit –

(1) that the merits of the factual dispute were not resolved in the state court proceeding;

(2) that the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the state court hearing;

(4) that the state court lacked jurisdiction of the subject matter or over the person of the applicant in the state court proceeding;

(5) that the applicant was an indigent and the state court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the state court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the state court proceeding; or

(7) that the applicant was otherwise denied due process of law in the state court proceeding;

> (8) or unless that part of the record of the state court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:
>
> > And in any evidentiary hearing in the proceeding in the federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7) inclusive is shown by the applicant.

28 U.S.C. § 2254.

STATEMENT OF THE CASE

Application was made on behalf of petitioner to the United States District Court at Hartford, Connecticut, on May 5, 2003, with the petition for habeas corpus, with exhibits and court record, to the clerk who – REFUSED – to accept the filing.

Reason for refusing was a standing order from Judge Dorsey that "NO PAPERS" of Augustus Simmons will be accepted by the court except by order of Judge Dorsey.

Petitioner, being incarcerated, has no knowledge of what court Judge Dorsey is located at, whether or not he is still sitting as a judge, where and how to reach his honor

and petitioner's position is that the District Court was constitutionally obligated and congressionally mandated to accept the habeas petition and forward to Judge Dorsey for merit evaluation – AND – pass on to another judge inasmuch as the standing order and the – CONTINUING – flagrant constitutional violations, admitted by respondent, DO NOT warrant such a political roadblock.

Because it is the Connecticut Supreme Court that is the – FLY IN THE OINTMENT – it was intent of petitioner to file in both District Court and United States Supreme Court.

Damages

At the very heart of this – PROBLEM CASE – one word identifies the whole problem –(the heading).

Petitioner alleges:

(1) The judicial department must respect and comply with the legislative command (Special Act #170 (1969)) citations omitted.

(2) The judicial department must respect and comply with the congressional command (Title III of Uniform Real Property Acquisition Act, 42 U.S.C. §§ 4651-4655 (1971)) whereby, wherein the Connecticut legislature, per submission from Connecticut Department of Transportation enacted C.G.S. § 48-17a to be in compliance with federal regulations.

(3) Where this 83-year youngster received notice – AGAIN – from social security on May 9, 2003, at the institution that his social security and Medicare payments have been

> suspended due to the incarceration to add to the "DIRTY TRICKS," "ECONOMIC COERCION," "UNCONSTITUTIONAL BEHAVIOR," intentional, willful, judicial disregard by the Connecticut Supreme Court of its previous constitutional mandate to the state Department of Transportation in 160 Conn. 492 (1971) – *"that the prescribed method of taking must be followed,"* is an obvious, glaring violation of the constitution, laws, and treaties of the United States.

Notwithstanding all the claims, jockeying, innuendos, horse feathers, decrees by the Supreme Court of Connecticut, the record is ultra clear that there has not been a single hearing on petitioner's damage action, that the petitioner/owner will – NEVER – yield, transfer, give away, or tender any title, rights, interests, or jurisdiction of one (1) square foot of Simmons' properties (including highway actions) without an assessment of DAMAGES; the reason the properties reverted to the owner in 1972 was to avoid any assessment of damages; the short-circuiting of the superior court and Referee Shapiro on 12/13/77 of fifteen (15) hearing dates by corrupt (Rogin-Hirtle, Esq.'s) with the tacit approval of the Supreme Court of Connecticut was justification for the "KICK ASS" of the corrupt, rotten-to-the-core dual-representatives that stunk up the state.

REASONS FOR GRANTING THE WRIT

Petitioner Augustus Simmons, in state custody over four decades of real property issues seeks a review of Connecticut Supreme Court Decision, *Simmons v. Wetherall*, 180 Conn. 587 (1980) under Title 28 U.S.C. § 2254

wherein the supreme court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the constitution or laws or treaties of the United States.

Question for Review

The federal question pursuant to 28 U.S.C. § 2254 is whether petitioner/owner is being held in custody in violation of the Constitution, laws, or treaties of the United States by the decree of the Supreme Court of Connecticut in *Simmons v. Wetherall*, 180 Conn. 587 (1980), an only remedy 1970 tort action without a single hearing on damages – foreclosed on May 31, 2000 notwithstanding two (2) null and void condemnations; transcending the limits of its authority that is VOID on its face without jurisdiction of the subject matter – or the parties; without any mesne process initiated before the original courts of competent jurisdiction of Connecticut, without any docket number, decree, judgment, stipulation, contract, agreement regards real property acquisition before the superior court upon which the supreme court could act; denial of a day in court and a full and fair hearing; where the incidents of INTENT TO DEFRAUD were several, significant, and fraudulent as combining of cases to keep "LEASES" between state and federal agencies of petitioner's real property without notice or compensation to the owner – OUT OF COURT AND OUT OF THE RECORD; canceling fifteen (15) hearing dates for damages on first day of appearance by private counsel (Rogin-Hirtle, Esq.'s); placing of encumbrances against the real properties without notice or service of process on interested and

necessary parties – without any pre- or post-deprivation hearings for real property contracts; that upon the rejection, repudiation, disassociation and constitutional right *NOT* to entertain, accept, assign, use a fraudulent "VERBAL" offer by refusing to tender any deeds on April 19, 1978 to discharged and withdrawn private counsel (Rogin-Hirtle, Esq.'s) acting in joint representation simultaneously of petitioner/owner and respondent – the petitioner (plaintiffs)* was denied due process of law.

Under the Fourteenth Amendment, plaintiffs were entitled to notice and opportunity to be heard that necessarily required that the notice and hearing should correspond and relief granted should be appropriate to that which had been heard and determined on such notice.

The supporting facts, documents, and exhibits of the motion to dismiss of April 8, 2003 in state criminal court in addition to the docketed related matter on March 3, 2003 (#02-1280) in the United States Supreme Court warrant an immediate release from custody of the owner and the stamp of VOID on the State Supreme Court decision, 180 Conn. 587 (1980).

Claim One

Prisoner is in custody in violation of the constitutional rights of a United States citizen – REFUSING – to tender any deeds to real property on April 19, 1978, and REJECTION, REFUSAL TO ENTERTAIN, TAKE, ASSIGN,

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* Refers to lien-holders on land records on June 5, 1978 and all subsequent attachments.

USE, or APPROPRIATE an unconstitutional, fraudulent "VERBAL OFFER" that was returned to the state treasury on December 23, 1991, which refusal to tender any deeds resulted in a WITHDRAWAL from representation of the owner by the discharged, corrupt, bargaining in bad faith private counsel (Ed Rogin, Sr. & Robert Hirtle, Esq.'s) on April 19, 1978.

The record is crystal clear there *IS NOT, HAS NOT, WAS NOT, COULD NOT* be any mesne process initiated with the court of first jurisdiction (superior) by Rogin-Hirtle, Esq.'s to acquire TITLE, RIGHTS, JURISDICTION to the subject real properties since March 24, 1972 when ownership reverted back to the original owner as a result of two (2) null and void condemnations.

Docket #163875, *Simmons v. Wetherall*, initiated per Special Legislative Act #170 (1969) on January 2, 1970 for DAMAGES as a result of two (2) null and void condemnations never had a single hearing and on May 31, 2000, the Connecticut Supreme Court – CLOSED THE DOORS – denying one (1) dollar just compensation.

Federal law 42 U.S.C. §§ 4653 and 4654 reinforces the mandate on damages with the legislature enacting C.G.S. § 48-17a to comply.

Where the legal fees and associated costs against the first ten (10) years of null and void condemnation attempts, including land not necessary for airport operations, was greater than the fraudulent verbal offer, makes it readily apparent there cannot be a "satisfactory property interest" acquisition without a hearing or award of one (1) dollar compensation.

(1) Supporting Facts: See motion to dismiss in state court, with exhibits, dated April 8, 2003. See also Docket #02-1280 docketed with the United States Supreme Court on March 3, 2003 on a directly related matter.

Claim Two

Claim Two: Lack of jurisdiction of the subject matter and lack of jurisdiction of the person (parties) under 28 U.S.C. § 2254(d)(4) is supported by the following:

(a) Exhibits #6 and 6(a) wherein Hon. John Daly DENIED any "slush funds" to Rogin-Hirtle, Esq.'s pursuant to notice and cite 80 c 599 by Chief Clerk Lucian Jachamovitz in August 1979, *prior* to the supreme court decision of 180 Conn. 587 (1980), that there were NO PROCEEDINGS before the superior court for acquisition of subject properties.

(b) Exhibit #1, transcript of June 4, 1982, *after* 180 Conn. 587 (1980), the state (attorney general's office) challenges the superior court with lack of jurisdiction before Hon. Dupont, A., and, Attorney Walter Bass challenges the superior court with no notices or service on interested and necessary parties resulting in a DENIAL of any payments from the "slush fund" submitted to the court without any mesne process possible by discharged and withdrawn private counsel Rogin-Hirtle, Esq.'s.

(c) Exhibit showing the "RETURN OF FUNDS" to the state treasury for prime reason of not acquiring deeds, title, or rights to the real properties. (Ex. #5).

(d) Transcript of June 4, 1982 acknowledges the fact of NO DOCKET NUMBER, NO NOTICES, NO HEARINGS, NO RETURN OF SERVICE TO SUPERIOR COURT, and GROSS MISCARRIAGE OF JUSTICE BY THE SUPREME COURT OF CONNECTICUT.

e) TRANSMOGRIFYING *Simmons v. Wetherall*, #163875 (1970) tort action into an eminent domain action by the state supreme court in trying to avoid the constitutional requirements of due process is unlawful with United States Supreme Court. See *Standard Oil of New Jersey v. United States*, 221 U.S. 1, 31 S.Ct. 502, 509 (1911).

28 U.S.C. § 2254

(a) Petitioner is in custody in violation of the constitution or laws or treaties of the United States as shown and illustrated by sections (b), (c), and (d) – with exhibits where, citing *Stone v. Powell*, 96 S.Ct. 3037 (1976) at p. 3060 reads:

> "The prevailing constitutional rule is that unconstitutionally seized evidence cannot be admitted in the criminal trial of a person whose federal constitutional rights were violated by the search or seizure. The erroneous admission of such evidence is a violation of the federal constitution."

Also, convicted on the basis of unconstitutionally obtained evidence erroneously admitted against them by the state trial courts, acknowledges that respondents had the right to obtain a reversal of their conviction on appeal in the state courts or on certiorari to this court.

(b) Where there is a total and complete absence of any stipulations, judgments, agreements, contracts in or with the courts of the State of Connecticut for the acquisition of petitioner/owner/prisoner's real property (see Ex. #1 and 6 and 6a), the proceeding by the Connecticut Supreme Court has, per Chief Clerk Jachamovitz, L. (now retired), pie on its face.

(c) Petitioner's remedies have been exhausted after the highest court in the state, forecloses the right to seek just compensation on May 31, 2000, without ever a single hearing or a day in court.

(d) There was never a hearing on the merits of the factual issue by a state court of competent jurisdiction. There was *NO* written findings, *NO* written opinion and *NO* adequate written indicia upon which the Supreme Court of Connecticut could act upon.

Under Section (d) applicant has established and respondent has admitted on the record, that [THERE IS NO RECORD].

Therefore, regards Part (1):

(1) The merits of the factual dispute were not resolved where there was no state court proceeding.

(2) The fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing was not possible without a day in court.

(3) That the material facts were not adequately developed at the state court hearing – was not possible where there was never any

hearings, not even a docket number with the court of competent jurisdiction.

(4) Lack of jurisdiction of subject matter and lack of jurisdiction of the person (parties) has been addressed in opening paragraph of claim two.

(5) Petitioner does not claim indigence.

(6) That petitioner did not receive a full, fair, and adequate hearing is illuminated under Connecticut jurisprudence, and, full and fair opportunity to litigate at pages 5, 6, and 7 of petitioner's motion to dismiss dated April 8, 2003 – that was never addressed.

Petitioner directs the court's attention to page 22 of Ex. #1 relative to taxes and ensuing acknowledgement relative to hearings that reads:

> "Well, paragraph three, and quoting, that the clerk of said court pay to the tax collector for the town of East Granby the sum of 8761.29 together with accrued interest, lien in releases from the sum deposited.
>
> This order was without due process and there was no notification to the tax collector or the clerk, and there was no notification to Mr. Simmons that such an order would be entered. There was no opportunity for the parties to appear in open court and agree or to present evidence on the nature of this order."

(7) That the applicant was denied due process of law in the state court proceeding is acknowledged by respondents within Exhibits #1, 6, and 6a and where neither petitioner nor respondent can submit or offer a transcript,

or excerpts therefrom of non-transpired proceedings. THE QUESTION ANSWERS ITSELF.

(8) Where neither petitioner nor respondent can produce to the federal court that part of the record of the state court proceeding in which the determination of such factual issue was made, such evidentiary hearing in proceeding in federal court will clearly illuminate the fact that the state supreme court proceeded to render the decision of *Simmons v. Wetherall*, 180 Conn. 587 (1980) with – NO RECORD – before the superior court.

Despite all the claims, hoopla, bullcrap, settlements, stipulations, judgments, the record speaks for itself at Vol. 112, page 006 of Exhibit #7 wherein the lien of Attorney Tom Byrne, from condemnation years, remains outstanding since 1974, with several others, attesting to the fact that the supreme court was acting in 180 Conn. 587 (1980) without any notices, service of process, no mesne process, no proceedings before the superior court, attesting to the fact that no title, rights, or jurisdiction was ever acquired.

If the supreme court was of the opinion that the owner did not have a constitutional right to refuse to tender any deeds (Ex. #3), irrespective of any cause or reason, then the answer was a day in court, not a WITHDRAWAL by counsel as was made on April 19, 1978 (Ex. #4).

Co-Conspiratorial Fraud

Without question, the ulterior motive of discharged and withdrawn counsel (Rogin-Hirtle, Esq.'s) in concert

with the state supreme court in disallowing a day in court in damages was to keep the conspiratorial leasing of petitioner's real property by trespasser, Connecticut Department of Transportation to the federal agency, F.A.A., without any notice or compensation to the owner – OUT OF THE RECORD; OUT OF COURT, exposing why the offer was VERBAL and rejected and no deeds.

Petitioner draws the court's attention to Appendix D of Docket #02-1280 of petition for certiorari, a 1974 LEASE entered into after reverting ownership in 1972 after failed condemnations where at page 22 of Appendix D, Item #10 reads:

> *"The lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the government the rights and interests set forth herein."*

Item #16 at page 25 reads:

> This lease will supersede license DOT-FA73NE-0308 on commissioning of the CAT II ILS System.

IN RETROSPECT, the canceling of the fifteen (15) hearing dates on damages by (Rogin-Hirtle Esq.'s) on December 13, 1977 was of such significant FRAUD that it was grossly improper for the Supreme Court of Connecticut to "cover up," shelter, and shield such an atrocious unconstitutionally-continuing endeavor.

Unconstitutional Seizure-or-Criminal

Was the unconstitutional [SEIZURE] in 1991 by Air National Guard with a grant from the trespasser, Connecticut Department of Transportation of approximately three (3) acres of real property referred to as Parcel "A", totally disconnected and independent from Parcel "C" with F.A.A. appropriation, without notice or compensation a Fourth and Fourteenth Amendments VIOLATION – or – is the owner a criminal in asserting his rights under the federal constitution?

In attempting to evaluate the rights of the owner it becomes necessary to look at the forty (40) year history between the owner and the state, the refusal to tender deeds, the several police power seizures which the owner has attempted to portray to the court in this habeas request.

On the date of this police-power entry (2/2/91) there were fifteen (15) lien-holders against the real property, and, as illustrated in Exhibit #7 several remain as this habeas request is sought.

Three certified notices to remove fence from private property were received by respondent – to no avail. An ejectment action was instituted in federal district court six months ago and the court has refused to act. If the owner permits the encroachment fence to stand – and do nothing – the claim of SQUATTER RIGHTS will be claimed. Under Connecticut jurisprudence, C.G.S. § 48-21, all lien-holders must be paid before the owner. "ECONOMIC COERCION," in violation of 42 U.S.C. §§ 4601-4655 of the Real Property Acquisition Act (P.L. 91-646 (1971)) is the main thrust of state "dirty tricks."

Citing *Stone v. Powell*, 96 S.Ct. at 3060 reads:

> "The prevailing constitutional rule is that unconstitutionally seized evidence (real property) cannot be admitted in the criminal trial of a person whose federal constitutional rights were violated by a seizure. The erroneous admission of such evidence is a violation of the federal constitution." (emphasis added).

Claim Three

Claim Three: Petitioner/prisoner/owner alleges extensive FRAUD, [EGREGIOUS PERJURY] by prosecution to jury of a PURCHASE, DENIAL OF REFEREE TO PROCEED WITH JUST COMPENSATION CLAIMS UNDER FIFTH AND FOURTEENTH AMENDMENTS and/or A FULL AND FAIR OPPORTUNITY TO LITIGATE by denial of A DAY IN COURT.

(a) A "VERBAL OFFER" is unenforceable under the statute of frauds.

(b) The constitution guarantees a hearing in DAMAGES of which there was NONE, notwithstanding two (2) null and void condemnations.

(c) Owner/prisoner was never provided A DAY IN COURT since March 24, 1972 when ownership reverted to the owner after two bumbling unconstitutional condemnations.

(d) There was never any pre- or post-deprivation hearings against the "phoney-baloney" encumbrances on land records.

(e) It was intentional, malicious, bad faith, preplanned fraud to be retained on a contingency basis for fifteen (15) days of hearings on damages before Referee Shapiro by (Rogin-Hirtle, Esq.'s) and on first day of appearance, 12/13/77, to have "AXED" all dates was justification for DISCHARGE that was hand delivered on December 23, 1977 ENDING all authority, right, jurisdiction of the owner's representation.

(f) Several lien-holders remain on the land records that is prima facie evidence that no rights, title, or interest have ever been acquired by the state.

(g) The PILFERING of in excess of $113,000.00 from the unconstitutional, fraudulent, rejected "slush fund" with no opportunity by more senior lien-holders who were never served or had notice was – FRAUD.

(h) Interest must be ascertained on a "valid offer" after decades of litigation with no mention or reference in "verbal offer."

(i) Fourth Amendment protects against illegal, unlawful, unconstitutional – encroachment – seizures.

Sixth Amendment protects rights where ineffective assistance of counsel is demonstrated.

Fifth and Fourteenth Amendments are a guarantee of fair and just compensation.

(j) C.G.S. § 8-129 is the applicable procedural statute relative to written statements of compensation, notices, return of service and no valid judgments can be rendered without

compliance whether by PURCHASE, EXCHANGE, LEASE, GIFT, or in the exercise of EMINENT DOMAIN.

(k) Where the owner has cleared the land records of the "phoney-baloney" encumbrances under C.G.S. § 52-327 on December 2, 1996 (Ex. #7), the incarceration of the owner must cease immediately.

(l) There were never any further condemnation attempts after March 24, 1972.

(1) Supporting Facts: See motion to dismiss in state court, with exhibits, dated April 8, 2003. See also docket #02-1280 docketed with the United States Supreme Court on March 3, 2003 on a directly related matter.

Transcending – Transmogrifying

VOID – VOID – VOID – VOID
Simmons v. Wetherall, 180 Conn. 587 (1980)

That the petitioner is being held in custody in violation of the constitution, laws, treaties of the United States is exemplified with the citation of *Standard Oil of New Jersey v. United States*, 31 S.Ct. at 509.

The federal question is whether, in that court, with such jurisdiction, the defendants were denied due process of law.

Under the Fourteenth Amendment, they were entitled to notice and opportunity to be heard that necessarily required that the notice and hearing should correspond

and relief granted should be appropriate to that which had been heard and determined on such notice.

For even if a court has general jurisdiction, criminal and civil at law and in equity, it cannot enter a judgment which is beyond the claim asserted or, which, in its essential character, is not responsive to the cause of action on which the proceeding was based "though the court may possess jurisdiction of a cause, of the subject matter, and of the parties, it is still limited in its modes of procedure and in the extent and character of its judgments it must act judicially in all things and cannot then transcend the power conferred by the law."

If for instance the action be upon a money demand, the court notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant.

If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract.

If the action be for possession of real property, the court is powerless to admit in the case the probate of a will.

The judgments mentioned, given in the cases supposed would not be merely erroneous they would be absolutely void because the court in rendering them would transcend the limits of its authority in those cases.

Shelton v. Wolthausen, 80 Conn. 599 (1908), reads:

> "Where money is paid into court in an action to determine its ownership, it is in the custody of the law, and is to be disposed of only through the

medium of proceedings had in or relating to that cause."

With no proceedings ever initiated since reversal of ownership, even seventy-seven million could not be paid out by the court – more particularly where the owner refused to tender any deeds.

CONCLUSION

It has been a total and complete exercise in futility, as the record indicates, for the lower court (superior) to proceed in any direction, on any motions and has taken the position that because of the previous decision (*Simmons v. Wetherall*, 180 Conn. 587 (1980)) by the Supreme Court of Connecticut – the superior court CANNOT ACT.

Petitioner with the plethora of evidence submitted has demonstrated beyond a shadow of doubt that the Supreme Court of Connecticut has denied rights guaranteed by the United States Constitution – that there was never a "PURCHASE" and pleads for review in determining the constitutionality or unconstitutionality of 180 Conn. 587 (1980).

Petitioner was imprisoned on the perjured, deceptive, distorted testimony of the prosecutor that the state is the owner of Parcel "A" through a "PURCHASE" and the state, not Mr. Simmons is the owner, was put on probation and reimprisoned for purportedly "SWEARING" upon asking two members of Air Guard to leave an area that the owner permits spectator parking on. A prominent sign is displayed at entrance stating the lot is private property.

Evidence of ownership was – NOT PERMITTED – before the jury at criminal trial. Petitioner's defense counsel was ineffective in not offering or submitting Exhibits #1, nor #5, nor #7 that is now before the court.

Respectfully submitted,

Augustus J. Simmons